

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR 08-1127

ROBERT JAMES COOPER  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered MAY 27, 2009

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
[NO. CR 2007-2559]

HONORABLE JOHN LANGSTON,  
JUDGE

AFFIRMED

**M. MICHAEL KINARD, Judge**

Appellant, Robert James Cooper, appeals from his conviction on one count of rape. Appellant argues that the trial court erred in overruling his objection to certain statements made by the prosecuting attorney in his closing arguments to the jury. We affirm.

The victim in the case was thirteen years old when the incident occurred in November 2003. Prior to trial, appellant filed a motion in limine to exclude testimony from a second minor, who alleged that appellant raped her in 2007, when she was twelve years old. The trial court denied the motion, and the testimony from the second minor was allowed before the jury under the pedophile exception to Arkansas Rule of Evidence 404(b). Each minor testified that she became acquainted with appellant through his position as a maintenance worker at an apartment complex. Each minor also testified that she was raped by appellant in his apartment in the complex where he worked.

Before closing arguments were presented to the jury, the sides agreed upon the jury instructions to be given. Jury Instruction Number 10, which was proffered by appellant, stated as follows:

Members of the jury, you're instructed that evidence of other alleged crimes, wrongs, or acts of [appellant] may not be considered by you to prove the character of [appellant] in order to show that he acted in conformity therewith. This evidence is not to be considered to establish a particular trait of character that he may have, nor is it to be considered to show that he acted similarly or accordingly on the day of the incident. This evidence is merely offered as evidence of motive, opportunity, intent, identity, or absence of mistake or accident. Whether any other alleged crimes, wrongs or acts have been committed is for you to determine.

The record reflects that the State did not object to the instruction.

In his closing argument to the jury, the prosecuting attorney made the following statement:

PROSECUTING ATTORNEY:      What you have is, you have two children and incidents that happened two years apart, two separate apartment complexes, two very similar crimes . . . it shows you that he has a proclivity toward a certain group of children. He has an attraction to children.

In response, counsel for appellant made the following objection:

DEFENSE COUNSEL:              I object to his closing statements. I believe that that's not really going to motive, absence of mistake, et cetera. I believe he's basically just arguing hey, he's a bad dude, bad guy.

The trial court overruled appellant's objection. Following the guilt phase of the trial, the jury found appellant guilty of rape, and sentenced him to ten years in the Arkansas Department of Correction.

Appellant's sole point on appeal is that the trial court erred in overruling his objection to the statements made by the prosecuting attorney in his closing argument. The State argues in its brief that appellant did not preserve the issue for appeal. We agree. Where the specific objection raised on appeal was not made at trial, it is not preserved for our review. *Davis v. State*, 330 Ark. 501, 956 S.W.2d 163 (1997). While appellant clearly objected to the prosecutor's statement, the basis for his objection at trial is different from his argument on appeal. At trial, appellant objected, in essence, that the statement by the prosecutor violated Rule 404(b). Nowhere in his objection at trial did appellant mention Jury Instruction Number 10, nor did he express his belief that the prosecutor's statements violated the instruction. The objection made at trial must be sufficient to apprise the lower court of the error alleged. *Dorn v. State*, 360 Ark. 1, 199 S.W.3d 647 (2004). Appellant's failure to notify the trial court that his objection concerned a perceived violation of a jury instruction prohibited the trial court from being able to address the instruction and prohibits us from considering appellant's argument on appeal. As appellant's sole point on appeal was not preserved for review, the jury verdict is affirmed.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.